

BEFORE THE FISH, WILDLIFE AND PARKS COMMISSION  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 12.11.202, 12.11.205, 12.11.207, )  
12.11.210, 12.11.212, 12.11.215, and )  
12.11.220 regarding recreational water )  
use of the Beaverhead and Big Hole )  
Rivers )

TO: All Concerned Persons

1. On April 29, 2010 the Fish, Wildlife and Parks Commission (commission) published MAR Notice No. 12-362 pertaining to the public hearings on the proposed amendment of the above-stated rules at page 968 of the 2010 Montana Administrative Register, Issue Number 8.

2. The commission has amended the following rules as proposed: ARM 12.11.205, 12.11.207, 12.11.212, 12.11.215, and 12.11.220.

3. The commission has amended the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

12.11.202 RIVER DEFINITIONS The following definitions apply to this subchapter:

(1) through (5) remain as proposed.

(6) "Official access site" means those river access sites that are ~~publicly owned, managed, and maintained as an access point~~ for public use. The following are official access sites on the Big Hole River:

(a) through (g) remain the same.

(h) Maiden Rock BLM ~~fishing access~~ recreation site;

(i) Divide ~~Bridge fishing access~~ BLM recreation site;

(j) remains the same.

(k) George Grant/Dewey fishing access site;

(l) Jerry Creek ~~Bridge fishing access~~ BLM recreation site;

~~(m) Mallons fishing access site;~~

~~(n)~~ (m) Dickie Bridge ~~fishing access~~ BLM recreation site;

~~(o)~~ (n) East Bank BLM ~~fishing access~~ recreation site;

(p) and (q) remain the same but are renumbered (o) and (p).

~~(r)~~ (q) Mudd Creek Bridge BLM ~~fishing access~~ recreation site.

(7) through (9) remain the same.

AUTH: 87-1-301, 87-1-303, MCA

IMP: 87-1-303, MCA

4. The commission has amended the following rule to be consistent with the amendments to ARM 12.11.202:

12.11.210 BIG HOLE RIVER RECREATIONAL USE RESTRICTIONS

(1) remains the same.

(a) all seven days of the week, the river reach from the headwaters to Mudd Creek Bridge ~~fishing access~~ BLM recreation site is closed to any float outfitting;

(b) each Sunday, the river reach from Divide ~~Bridge fishing access~~ BLM recreation site to Salmon Fly fishing access site is closed to any float fishing by nonresidents and to any float outfitting;

(c) remains the same.

(d) each Tuesday, the river reach from Mudd Creek Bridge ~~fishing access~~ BLM recreation site to Fishtrap fishing access site is closed to any float outfitting;

(e) each Wednesday, the river reach from East Bank BLM ~~fishing access~~ recreation site to Jerry Creek ~~Bridge fishing access~~ BLM recreation site is closed to any float outfitting;

(f) each Thursday, the river reach from Fishtrap fishing access site to East Bank BLM ~~fishing access~~ recreation site is closed to any float outfitting;

(g) remains the same.

(h) each Saturday, the river reach from Jerry Creek ~~Bridge fishing access~~ BLM recreation site to Divide ~~Bridge fishing access~~ BLM recreation site is closed to any float fishing by nonresidents and to any float outfitting.

(2) remains the same.

AUTH: 87-1-301, 87-1-303, MCA

IMP: 87-1-303, MCA

5. The commission received a total of 23 comments and has thoroughly considered the comments and testimony received. A summary of the comments received and the commission's responses are as follows:

COMMENT 1: Department of Fish, Wildlife and Parks (department) personnel stated ARM 12.11.210 needed to be amended to be consistent with the amendments to ARM 12.11.201.

RESPONSE 1: The commission has amended ARM 12.11.210 to reflect the amendment to ARM 12.11.201.

COMMENT 2: The commission received six comments in general support of all the amendments.

RESPONSE 2: The commission appreciates the interest in this rulemaking process.

COMMENT 3: The commission received three comments in general opposition of the amendments. Opposition was given because during the open house review session the majority of participants commented that the rules are

working well and requested no changes to the rules; the public is mostly limited to using the rivers on weekends and therefore it is important to retain all of restrictions on outfitters; the outfitters don't need any more concessions that might allow them to justify historical usage in the future; and the rules should be amended to further restrict outfitters and nonresident recreationists.

RESPONSE 3: The commission adopted changes intended to improve the effectiveness of the rules without substantively altering the major components of the rules that the public expressed support for during the open houses. This includes retention of the rules restricting float outfitting on different days of the week, including weekends. The adopted changes could lead to an increase in the number of outfitters using the lower section of the Beaverhead River and the upper section of the Jefferson but this does not imply or guarantee future opportunities to conduct outfitting on either of these two rivers. After reviewing the rules the commission did not conclude that further restrictions on outfitters or nonresident float anglers were warranted.

COMMENT 4: One person stated the Department of Fish, Wildlife and Parks needed to provide more enforcement on the Beaverhead River.

RESPONSE 4: The commission agrees enforcement of rules and regulations is important and the department frequently patrols the Beaverhead River, via boat, foot, and vehicle, and consistently performs numerous permit, license, and rule compliance checks.

COMMENT 5: Three people supported the amended Beaverhead River definition allowing any licensed outfitter to use the lower Beaverhead River beginning at Jessen Park to gain access to the Jefferson River.

RESPONSE 5: The commission appreciates the interest in this rulemaking process.

COMMENT 6: Five people opposed the amended Beaverhead River definition allowing any licensed outfitter to use the lower Beaverhead River beginning at Jessen Park. Opposition was given because allowing the increased use of the lower portion of the Beaverhead River by outfitters could create a degraded experience for other recreationists and also increase fishing pressure from outfitters on the upper section of the Jefferson River.

RESPONSE 6: The section of the Beaverhead River below Jessen Park is approximately 2.4 mile, which represents a relatively short section of the entire river. There are other sections of the river that will remain closed to float outfitting. Enabling outfitters to use the lower Beaverhead River to gain access to the upper Jefferson River is a reasonable compromise that does not have a significant impact on the general recreating public. The river recreation rules are largely intended to affect recreation on the Beaverhead and Big Hole rivers. Fishing pressure on the

Jefferson River, whether from outfitters or other members of the angling public, are addressed via the department's fishing regulations.

COMMENT 7: Three people stated support for the five-year review of the recreational use rules for the Beaverhead and Big Hole Rivers.

RESPONSE 7: The commission appreciates the interest in this rulemaking process.

COMMENT 8: Six people expressed opposition to the five-year review of the recreational use rules for the Beaverhead and Big Hole Rivers. Reasons for the opposition include: reviewing the rules every five years is unnecessary, expensive, and places a burden on the public to participate in the review process and the past two reviews have yielded relatively few changes, evidence that a mandatory five-year review is not a good use of resources. It was suggested a ten-year review cycle would be more appropriate and consistent with other department plans.

RESPONSE 8: Reviewing the rules allows the commission to consider whether the rules are accomplishing their intended purpose and reflect changes that may have occurred. Doing so on a five-year basis provides frequent enough analysis to be responsive to changes but not so frequent as to place an unreasonable demand upon the participating public and department resources.

COMMENT 9: The Fishing Outfitters Association of Montana expressed support for all four of the proposed rule changes and commented that a periodic review is a good compromise between requiring a complete river management plan and no review at all. The association commented that continuing the rules without a review process would perpetuate controls on outfitters and nonresident float anglers based on conditions and use patterns labeled as crowding that existed over a decade ago and would ignore any trends or use patterns that have lessened since the original rules were adopted. The association expressed regret that the department's recent review process did not conduct an objective analysis of recreation use trend data than may have warranted discussion of reduced restrictions, but instead used a review process that was relatively subjective and opinion-driven.

RESPONSE 9: The commission appreciates the association's interest in this rulemaking process. In regard to examining recreation use trend data, the department has fishing pressure estimates for the entire Beaverhead River and three sections of the Big Hole River. The river recreation rules apply to more specific sections of the two rivers, which make it difficult to use the fishing pressure estimates to assess the effect of the rules on recreation trends. The commission also questions whether trend information alone is sufficient for reviewing the rules. The rules are intended to improve the recreation experience. The recent review process solicited public input on whether the rules have been effective in achieving their intended purpose. The public responded that the rules have improved their recreation experience.

COMMENT 10: One person asked for assurance that nonfishing individuals are allowed to launch up to six kayaks or canoes per party for safety purposes. They commented that a typical rescue situation may require a minimum of four persons.

RESPONSE 10: ARM 12.11.210(2) states that all float users, including each float outfitter, are limited to a total of two launches at or near each official access site per day on the Big Hole River. This rule regulates the number of launches an individual may conduct on a daily basis, but does not prohibit a group of kayakers or other boats from floating together.

/s/ Bob Ream

Bob Ream, Chairman  
Fish, Wildlife and Parks Commission

/s/ Rebecca Jakes Dockter

Rebecca Jakes Dockter, Rule Reviewer  
Department of Fish, Wildlife and Parks

Certified to the Secretary of State July 19, 2010